

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DANIEL CHANDLER,

Plaintiff,

v.

CASE NO. 12-12738
Hon. Lawrence P. Zatkoff

NOE ALVARADO, DEBRA SCUTT,
C.C. BROWN, SEAN LOCKHART,
KURT CRUST and JOHN DOE,

Defendants,

**OPINION AND ORDER ADOPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff, a federal prisoner proceeding *pro se*, filed this case pursuant to 42 U.S.C. § 1983, alleging that Defendants interfered with his First Amendment rights as they related to his activities in the prison narcotics anonymous (“NA”) group. This matter is currently before the Court on Magistrate Judge Mona Majzoub’s Report and Recommendation (Docket #22), wherein the Magistrate Judge recommends that: (1) the Motion to Dismiss filed by all named Defendants other than Noe Alvarado (Docket #13) be granted; (2) Plaintiff’s Cross Motion for Summary Judgment (Docket #16) be denied; (3) Plaintiff’s Motion for Default Judgment (Docket #23) be denied, and (4) the John Doe defendant be dismissed from this action pursuant to 28 U.S.C. § 1915(e)(2)(B). Plaintiff timely filed a number of objections to the Report and Recommendation.

After a thorough review of the court file (including the parties’ motions and briefs), the Report and Recommendation, and Plaintiff’s objections to the Report and Recommendation, this Court will adopt the Report and Recommendation and enter it as the findings and conclusions of this Court. The Court will, however, briefly address Plaintiff’s objections.

Plaintiff first argues that the Magistrate Judge did not interpret the facts appropriately. This argument lacks merit, as the Magistrate Judge accurately recited the allegations set forth by Plaintiff in his Complaint.

Plaintiff next argues that the Magistrate Judge erroneously recommended granting the motion

to dismiss with respect to all named Defendants other than Noe Alvarado. Again, the Magistrate Judge set forth the facts as alleged by Plaintiff and all facts were construed in a light most favorable to Plaintiff. As is clear by the allegations in the Complaint, the Report and Recommendation and Plaintiff's objections to the Report and Recommendation, the real issue in this case is the conduct of Noe Alvarado—the other named Defendants performed their roles and took the action required of them. Therefore, this Court concludes that dismissal of Plaintiff's cause of action against the named Defendants other than Noe Alvarado is warranted.

Plaintiff's third objection is based on his belief that his motion for summary judgment should not have been denied. As discussed above, Plaintiff's claims against all of the named Defendants other than Noe Alvarado are subject to dismissal. As the Report and Recommendation indicated, at this point in the litigation, it appears there are genuine issues of material fact that exist with regard to Plaintiff's claims against Defendant Noe Alvarado. Plaintiff's objection also recognizes this existence of a genuine issue of material fact at this time, though he does not appear to understand that the existence of genuine issues of material fact precludes the entry of summary judgment. *See Fed.R.Civ.P. 56.*

Plaintiff's fourth objection relates to an affidavit he filed on the docket in December 2012, an affidavit that none of the Defendants ever addressed. Plaintiff contends that the failure of Defendants to respond to the affidavit deems all representations therein to be true. Plaintiff has not cited any authority, nor is the Court aware of any authority, to support Plaintiff's contention, as there is no rule that requires a party to respond to a randomly filed affidavit.

Plaintiff's fifth objection is that the Magistrate Judge erred when she recommended denying his Motion for Default. This objection lacks merit as all Defendants (other than the John Doe defendant) filed answers to Plaintiff's Complaint. As Defendants filed answers to the Complaint prior to any motion for default, any such motion for default must be denied.

Plaintiff's final objection is that the Magistrate Judge erred in recommending that Plaintiff's claims against Defendant Noe Alvarado be dismissed. The Magistrate Judge did not recommend

dismissal of Plaintiff's cause of action against Defendant Noe Alvarado, however, nor is this Court dismissing Plaintiff's claim against Defendant Noe Alvarado.

Therefore, for the reasons set forth above, the Court denies all six of Plaintiff's objections to the Report and Recommendation. Furthermore, for the reasons stated above, the Court hereby ORDERS that:

- (1) The Motion to Dismiss filed by all named Defendants other than Noe Alvarado (Docket #13) is GRANTED;
- (2) Plaintiff's Cross Motion for Summary Judgment (Docket #16) is DENIED;
- (3) Plaintiff's Motion for Default Judgment (Docket #23) is DENIED, and
- (4) The John Doe defendant is DISMISSED from this action pursuant to 28 U.S.C. § 1915(e)(2)(B).

IT IS SO ORDERED.

Dated: May 23, 2013

S/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE